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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CAESARS WORLD, INC. and PARK PLACE ENTERTAINMENT CORPORATION,	:	Hon. Roger L. Hunt, U.S.D.J.
Plaintiffs,	:	CV-S-02-1287-RLH(RJJ)
v.	:	
CYRUS MILANIAN and THE NEW LAS VEGAS DEVELOPMENT COMPANY, LLC,	:	
Defendants.	:	

PLAINTIFFS' OPPOSITION TO DEFENDANT CYRUS MILANIAN'S MOTION FOR RECONSIDERATION AND ALTERATION OF JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR CONTEMPT

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PRELIMINARY STATEMENT

Plaintiffs Caesars World, Inc. ("CWI") and Park Place Entertainment Corp. ("PPE") submit this brief in opposition to Defendant Cyrus Milanian's ("Milanian") Motion for Reconsideration and Alteration of Judgment ("Reconsideration Motion") and in support of Plaintiffs' Cross-Motion for Contempt.

The Reconsideration Motion is a baseless attempt by Milanian to avoid a finding of contempt for maintaining a lawsuit in New Jersey state court (the "New Jersey Action") for the same claims that this Court found to be waived compulsory counterclaims. Milanian filed the New Jersey Action on January 27, 2003, but concealed its existence from Plaintiffs until serving them on February 27, 2003. Milanian also did not tell this Court in his post-trial papers (filed on or about February 14, 2003) that he had filed the state court complaint three weeks earlier.

The Court's February 19, 2003 Judgment ("the February 19th Judgment") clearly bars Milanian from prosecuting the claims underlying the New Jersey Action in any forum. As soon as receiving the February 19th Judgment, Milanian should have withdrawn the New Jersey Action. Instead, Milanian served the complaint from the New Jersey Action. The Reconsideration Motion was filed two days after Plaintiffs advised Milanian's New Jersey counsel that absent resolution of the New Jersey Action Plaintiffs would seek an order of contempt.

FACTUAL AND PROCEDURAL HISTORY

The February 19th Judgment sets forth in detail the factual and procedural history of this case, and will not be repeated here. For purposes of this motion, Plaintiffs discuss the following facts and procedural history.

In his Answer to Plaintiffs' October 2002 Complaint, Milanian did not demand a jury trial. In December 2002, the Court scheduled a final trial on the merits for January 21, 2003. The matter was tried from January 21 to January 23, 2003. In their January 21, 2003 proposed findings, which were filed and served before trial began that day, Plaintiffs indicated that they would move this Court for a finding that any claims by Milanian with respect to developing a concept relating to The Colosseum, specifically Milanian's purported claim that he developed

this concept in 1996, be deemed compulsory counterclaims and thus waived by Milanian. Plaintiffs' Proposed Findings of Fact and Conclusions of Law, dated January 21, 2003 ("Plaintiffs' January 21 Findings") at 28-29, ¶¶32-38. Plaintiffs also stated their intention to seek to amend their Complaint to include a count six for declaratory judgment on any claim arising out of the 1996 events. *Id.* at ¶40-41. In response, Milanian neither objected to the proposed amendment nor complained about losing his right to a jury trial on the new claim.

Indeed, Milanian's witness list, prepared and served before the start of the trial, identified four individuals previously affiliated with or employed by CWI that were referenced in the 1996 documents on which Milanian now bases the New Jersey Action. *See* New Jersey Complaint ¶¶5-11, which is attached to Milanian's Reconsideration Motion. As a result, Plaintiffs presented evidence at trial to establish their claim for declaratory judgment on what would become the newly added count six. As set forth and explained in their post-trial submissions, a significant part of Plaintiffs' case went to the 1996 issue. Plaintiffs submitted evidence from witnesses, including one who traveled from Montreal, Canada, on those issues. Milanian not only did not object to that evidence when it was offered, but his counsel cross-examined on this area extensively. At no point did Milanian ever argue that he was entitled to have the claim tried to a jury.

After the close of evidence on January 23, 2003, Plaintiffs moved formally for leave to amend the Complaint. The Court granted the motion, but reserved on the question of whether there was sufficient evidence to enter judgment on that count. Once again, Milanian said nothing about a right to a jury trial. The Court then specifically directed the parties to submit post-trial briefs as to the merits of the newly added count six. Reporter's Transcript of Court Trial, January 23, 2003 at 473-77. For the third time, Milanian remained silent about any right to a jury trial.

In the February 19th Judgment, the Court ruled that Milanian's purported claims in developing the concept of a replica of the ancient Roman Colisseum in 1996 were sufficiently related factually and legally to the subject matter of this action "that such claims should have been asserted as compulsory counterclaims." February 19th Judgment at 52, ¶91. As such, this

Court held that "Milanian's failure to assert claims related to the 1996 events as compulsory counterclaims in this action means that he has waived them." *Id.* at 53, ¶92. In order to necessarily provide finality to this ruling, the Court specifically enjoined Milanian from bringing these compulsory counterclaims in any subsequent federal or state court action. *Id.* at 53, ¶93, 60, ¶120.

While recognizing that this holding made the amended count six moot, as an alternative basis for the relief granted, the Court also entered judgment in favor of Plaintiffs on the amended count six, finding that Plaintiffs' development of The Colosseum breached no duty, in either contract or tort, to Milanian arising out of any events in 1996. *Id.* at 59, ¶11.

On January 27, 2003, more than two weeks before filing his post-trial brief, Milanian filed a complaint in the Superior Court of New Jersey, *Cyrus Milanian v. Caesars World, Inc. and Park Place Entertainment Corp.* In that complaint, Milanian asserts claim for: (1) theft of trade secrets; (2) idea misappropriation; (3) breach of express contract; (4) breach of implied contract; (5) breach of confidential relationship; (6) misrepresentation; and (7) detrimental reliance. All of these counts are predicated upon Milanian's factual claims of developing the concept of the replica of The Colosseum in 1996 and presenting it to CWI. *See* New Jersey complaint ¶¶5-14.

Milanian did not serve Plaintiffs with a summons and complaint in the New Jersey action until February 27, 2003. On March 4, 2003, Plaintiffs' counsel, Stephen Feingold, contacted Milanian's New Jersey counsel, Kenneth Goodkind, to discuss the New Jersey Action. Affidavit of Stephen W. Feingold in Support of Plaintiffs' Opposition and Cross-Motion for Contempt ("Feingold Aff.") at ¶4. On that call, Mr. Goodkind advised that he had only received that day a copy of the February 19th Judgment. *Id.* Mr. Feingold told Mr. Goodkind that absent immediate resolution of Milanian's New Jersey Action (*i.e.*, voluntary dismissal by Milanian), Plaintiffs would seek contempt charges. *Id.* Milanian filed the Reconsideration Motion in this Court two days later.

ARGUMENT

Milanian's filing of the New Jersey action highlights the correctness of the Court's decision to issue an injunction and award judgment to Plaintiffs on the new count six in the Amended Complaint. The Court should reject Milanian's motion for the reasons outlined below and order the contempt sanctions requested by Plaintiffs. If Milanian disputes the February 19th Judgment, he is entitled to appeal to the Ninth Circuit. He may not, however, obtain a "second bite of the apple" in a New Jersey state court.

I. MILANIAN HAS NO GROUNDS TO MOVE FOR RECONSIDERATION OR ALTERATION OF THE FEBRUARY 19TH JUDGMENT.

Although Milanian does not specify the rule upon which he moves for reconsideration and alteration, the only basis for such a motion is *Fed. R. Civ. P.* 59(e). That rule establishes that in order to alter or amend a court's judgment, a party must show exceptional circumstances justifying such relief. A party may move under *Rule* 59(e) only if "the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); *see also Mt. Graham Red Squirrel v. Madigan,* 954 F.2d 1441, 1463 (9th Cir. 1992) (relief under *Rule* 59(e) also for fraud). A party cannot raise arguments or evidence that was available to it, but that it did not present at trial. *Cf. Lyons v. Jefferson Bank & Trust*, 954 F.2d 716, 728 (10th Cir. 1993) ("If a party, through negligence or a tactical decision, fails to present evidence that was available, it may not find refuge. . . .").

Milanian cannot allege any of those necessary predicates for relief under *Rule* 59(e) because none of them exist. The Reconsideration Motion contains no new evidence or any legal arguments that were not available to him when he tried this matter or filed his post-trial papers. The Court's February 19 Judgment is based on sound, accurate analysis of the facts and the law. Milanian's failure to establish any of the prerequisites grants this Court the authority to reject Milanian's motion without considering the substantive arguments.

Indeed, the only fraud in this case is the one Milanian has committed by not telling the Court about the New Jersey Action in his post-trial submissions. Milanian made the following arguments in his post-trial submissions:

- [E]ven putting aside Rule 11 and the criteria for bringing a proper claim in federal court, the 1996 letters do not begin to articulate a claim even in the layman's sense of the word. (Def. Post-Trial Brf. at 6).

- [A]djudicating the 1996 Claims would be error, because there is no case or controversy at this time, and the Court's Article III jurisdiction does not permit its intervention into matters where no case or controversy exists. (*Id.* at 7).

- [T]he 1996 Claims is not the subject of a case or controversy. Therefore, this Court would be exceeding its jurisdiction under Article III of the Constitution if it decided this issue. (*Id.* at 13).

- Milanian submits there is no claim ripe . . . for declaratory judgment. The declaratory judgment statute, 28 U.S.C. § 2201, requires the existence of a case or controversy. (*Id.*).

For Milanian to argue now that "had the Court taken the State Action into account, it would have [not issued an injunction]" simply underscores the outrageousness of Milanian's conduct. Milanian's assertions in his post-trial submissions cannot be squared with the claims he had asserted just two weeks prior in the New Jersey Action. Milanian is playing fast and loose with both this Court and the New Jersey courts. This conduct is sanctionable. Moreover, the doctrine of judicial estoppel bars Milanian from taking these totally inconsistent positions. *See Hamilton v. State Farm Fire and Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001) (judicial estoppel seeks to prevent parties from asserting inconsistent positions in different forums to gain advantage).[1]

II. MILANIAN'S SUBSTANTIVE ARGUMENTS ARE MERITLESS.

Milanian bases his motion for reconsideration on two arguments: (1) this Court exceeded its authority by enjoining Milanian from pursuing his 1996 Claims in state court; and (2) this Court has violated Milanian's constitutional right to a trial by jury on Plaintiffs' declaratory judgment count. Both arguments are groundless.

A. This Court Has The Authority To Enjoin Milanian From Filing Compulsory Counterclaims In Any Federal And State Court.

The Court's injunction barring Milanian from filing related claims in a federal or state action is entirely appropriate and fully consistent with the decision in *Seattle Totems Hockey*

[1] Absent some affirmative explanation from counsel that they were unaware of the New Jersey Action at the time they filed Milanian's post-trial submissions, a *Fed. R. Civ. P.* 11 inquiry is appropriate.

Club, Inc. v. National Hockey League, 652 F.2d 852, 854-55 (9th Cir. 1981), *cert. denied*, 457 U.S. 1105 (1982) (cited by the Court in the February 19th Judgment). The Court's injunction is based "on the long recognized power of courts of equity to effectuate their decrees by injunctions or writs of assistance and thereby avoid re-litigation of questions once settled between the same parties." *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993) (citing *Root v. Woolworth*, 150 U.S. 401, 411-12 (1893); *Hamilton v. Nakai*, 453 F.2d 152 (9th Cir. 1971), *cert. denied* 406 U.S. 945 (1972)).

This equitable power has been codified by Congress in the All-Writs Act, 28 U.S.C. § 1651, which gives federal courts the power to issue injunctions in aid of their jurisdiction. Courts routinely have held that the All-Writs Act also empowers federal courts to issue injunctions to protect or effectuate their judgments. *E.g., Wesch*, 6 F.3d at 1470; *Kinnear-Weed Corp. v. Humble Oil & Ref. Co.*, 441 F.2d 631, 637 (5th Cir), *cert. denied*, 404 U.S. 941 (1971); *Ward v. Pennsylvania New York Cent. Transp. Co.*, 456 F.2d 1046, 1048 (2d Cir. 1972); *see also McIntyre v. McIntyre*, 771 F.2d 1316, 1318-19 (9th Cir. 1985) (noting district court's "virtually unflagging obligation . . . to exercise the jurisdiction given them" even if it requires the district court to involve itself in state proceedings) (quoting *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813 (1976)). For these reasons, an injunction barring Milanian from prosecuting his New Jersey Action in no way offends the concept of state sovereignty.

The Anti-Injunction Act, 28 U.S.C. §2283, does not proscribe the injunction issued by this Court. As a check on the very broad powers inherent in the All-Writs Act, Congress passed the Anti-Injunction Act, 28 U.S.C. § 2283, which prohibits federal courts from enjoining state court proceedings except under three exceptions. Two of those exceptions apply here. Specifically, the Anti-Injunction Act authorizes a federal court to enjoin a state court proceeding: (1) when necessary in aid of its jurisdiction; and (2) to protect or effectuate its judgments.

Where, as here, "a court issues an injunction, it customarily retains jurisdiction to enforce it." *Wesch*, 6 F.3d at 1470 (citing *Suntex Dairy v. Bergland,* 591 F.2d 1663, 1068 (5th Cir. 1979); *Plaquemines Parish Comm. Council v. United States*, 416 F.2d 952, 954 (5th Cir. 1969) ("generally, a district court retains jurisdiction to enforce its prior orders"); *United States v.*

Fisher, 864 F.2d 434, 436 (7th Cir. 1988); *McCall-Bey v. Frenzen*, 777 F.2d 1178, 1183 (7th Cir. 1985); *cf.* 11 Wright & Miller, *Federal Practice & Procedure*, § 2961 at p. 599 (1973)). This Court unquestionably retains jurisdiction over the parties to enforce its February 19th Judgment, and thus has the power to enjoin Milanian from prosecuting the New Jersey Action.

The "to protect or effectuate judgment" exception in the Anti-Injunction Act is commonly referred to as the "relitigation exception." The relitigation exception is grounded in principles of *res judicata* and collateral estoppel. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988). The "essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court." *Id.* at 148; *see also Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1398 (9th Cir. 1992) (under the relitigation exception, a district court has the authority to stay a state court action if the state action involved the "same parties or their privies," and "the same cause of action" as the judgment on the merits in the prior federal action).[2]

The relitigation exception applies here because the parties and the causes of action are the same. This Court has ruled that any of Milanian's claims stemming from the 1996 events were compulsory counterclaims and thus waived because Milanian did not assert them in this action. The claims in Milanian's New Jersey complaint all stem from the 1996 events, as evidenced by the following allegations in the New Jersey Action:

> 5. On or about May 12, 1996, Milanian submitted an eight-page outline of a confidential business plan entitled the "Marlania Project" to CW [Caesar's World] in Las Vegas, Nevada.

[2] The cases cited by Milanian in purported support of his argument do not apply because they concern the injunction of a state court before the federal court had actually issued its final judgment. For example, in *Nolen v. Hammel Company, Inc.*, 56 F.R.D. 361 (D.S.C. 1972), the plaintiffs in an automobile personal injury action filed suit in federal district court, and the defendant then filed suit in state court. The federal court denied plaintiffs' petition to enjoin the state court action, finding that it was prohibited under the Anti-Injunction Act. Thus, the Ninth Circuit's footnote in *Seattle Totems,* which was cited in support by Milanian, was intended to apply only before judgment had been entered. *Seattle Totems*, 652 F.2d at 855 n.5. For instance, in *Brown v. McCormick*, 608 F.2d 410, 416 (10th Cir. 1979), the Tenth Circuit affirmed a district court's injunction barring the defendant from prosecuting a state court action based, in part, on the fact that it was a compulsory counterclaim that should have been raised in the federal litigation where judgment had already issued.

6. The Marlania Project included a sub-project for the construction of a replica of the ancient Coliseum of Rome and the integration thereof into the Caesar's Palace property of CW in Las Vegas, Nevada.

7. The replica Coliseum was to include an entertainment complex including restaurants, theatres, shops and special events.

9. By letter dated August 12, 1996, CW declined to further consider the Marlania Project and acknowledged the confidentiality of Plaintiff's submission.

10. By a certificate dated August 14, 1996, David Mitchell, a vice-president of CW confirmed receipt of the Marlania Project submission, advised plaintiff that CW had no interest therein "at that time" and further confirmed that submission was confidential.

. . . .

12. In April 2001, CW and PP [Park Place Entertainment] announced the construction of a replica of the Coliseum of Rome as an extension of their property in Las Vegas, and the use thereof as an entertainment and convention venue, which is presently scheduled to open in March 2003.

13. The construction of the replica detailed in the preceding paragraph was identical to the idea previously presented by Plaintiff.

14. Despite the fact that Plaintiff had presented the idea of constructing a replica of the Coliseum of Rome as an extension of the CW and PP property in Las Vegas, Defendants failed to provide Plaintiff with any credit, recognition, compensation or remuneration in any form.

* * *

In the February 19th Judgment, this Court specifically ruled that any legal claim based on allegations from 1996 were compulsory counterclaims. February 19th Judgment at 24-26, ¶¶ 74-81; 50-53, ¶¶ 82-94. The Court held the following: "[A]ny claim arising out of or related to the events of 1996 were compulsory counterclaims. The subject matter of the action was the ability of Plaintiffs to open the Coliseum without threats of legal action from Milanian." *Id.* at 51, ¶ 87 (emphasis added). Because all counts in Milanian's New Jersey complaint "arise out of or relate to" its factual allegations relating to the events in 1996, that entire complaint underlying the New Jersey Action falls within the Court's ruling on compulsory counterclaims.

To protect and effectuate its judgment on the compulsory counterclaims, this Court has the authority to enjoin Milanian from prosecuting the New Jersey Action.[3] That is so because

[3] The Court's authority to enjoin Milanian is further supported by the New Jersey Court's long-standing practice of giving preclusive effect to prior federal court judgments. In other words, even if Milanian

once a federal court issues a judgment, an exception of the Anti-Injunction Act clearly is triggered. Milanian's argument is tantamount to an assertion that this Court's judgment may be subverted by a subsequent state court decision. Such a contention is contrary to the All-Writs Act, Anti-Injunction Act, and the principles of comity and judicial economy. *See Restatement (Second) of Judgments* §19 (1982). This Court has the power, discretion and, indeed, responsibility, to enjoin Milanian from further prosecution of the New Jersey Action and to require him to dismiss that lawsuit with prejudice immediately. Indeed, now that the New Jersey Action is pending in the United States District Court for the District of New Jersey, there is no question as to this Court's power. But even if the New Jersey Action had not been removed, such an order would be appropriate.[4]

B. Milanian Waived Whatever Right He Had To Demand A Jury Trial On Plaintiffs' Declaratory Judgment Count.

Milanian had ample opportunity to demand a trial by jury on Plaintiffs' amended declaratory judgment count, but failed to do so. Milanian has therefore waived any right he had to demand a jury. *See Barber v. Page,* 390 U.S. 719, 724 (1968) (holding that whereas waiver of most constitutionally guaranteed rights requires "intentional relinquishment or abandonment," the Seventh Amendment right to a jury trial may be waived by a mere failure to act). Milanian was on notice that Plaintiffs sought to add an additional declaratory judgment count when they submitted their Proposed Findings of Fact and Conclusions of Law before the start of trial on January 21, 2003. In that submission, Plaintiffs made clear that they would seek leave to file an amended complaint for a declaratory judgment on the alleged 1996 events. Plaintiffs' January 21 Findings at 30, ¶40. Moreover, Milanian's proposed witness list included four individuals whose only conceivable testimony could have been on the 1996 events. But even

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convinces this Court to rescind its injunction order and the New Jersey federal district court remands, the state court will be obligated to dismiss Milanian's claims. *See Watkins v. Resorts International Hotel and Casino, Inc.*, 591 A.2d. 592, 124 N.J. 398, 406 (1991) ("The rule that state courts must accord preclusive effect to prior federal court judgments is so settled that it is accepted as axiomatic") (citations omitted).

[4] If necessary, this Court has the power to enforce its February 19th Judgment by enjoining the New Jersey state court itself. Based on principles of comity, however, "the injunction should issue against the litigant, and not the state court, whenever possible." *Silcox v. United Trucking Service, Inc.*, 687 F.2d 848, 853 (6th Cir. 1982).

though Milanian knew before trial of Plaintiffs' intention to amend, Milanian did not claim a right to a jury trial on the new claim, or say anything about a jury trial.

As a result, Plaintiffs went forward with their case, and submitted evidence and testimony to support what would become count six (Declaratory Judgment on the 1996 Claims) in the Amended Complaint. During Plaintiffs' case-in-chief, Milanian did not object to the testimony or suggest anything about a jury trial. On January 23, 2003, at the close of Plaintiffs' case, Plaintiffs formally moved for leave to amend their Complaint to add the declaratory judgment. This Court granted Plaintiffs' motion, but requested the parties to brief whether it could award judgment on that count in their post-trial briefs. Milanian did not make a jury demand on January 23, 2002, when Plaintiffs formally moved for leave to amend. On February 14, 2003, Milanian filed his post-trial submissions. Once again, he did not claim any deprivation of his Seventh Amendment right.

III. MILANIAN SHOULD BE HELD IN CIVIL CONTEMPT OF COURT.

Milanian's intentional violation of this Court's February 19th Judgment places him in civil contempt of court, both retroactively and prospectively. Milanian's contempt began as soon as he received notice of the February 19th Judgment and still continued to prosecute his New Jersey action. That conduct directly violated the Court's order. As a result, Milanian should be assessed a fine of no less than $1,000 per day from February 19, 2003 until entry of a Contempt Order (on Plaintiffs' cross motion) or when Milanian dismisses his New Jersey Action with prejudice, whichever occurs first. This $1,000 per day assessment is remedial in nature, because it is intended to both to coerce Milanian in dismissing his New Jersey Action and to compensate Plaintiffs for costs and fees incurred since February 19, 2003 in responding to Milanian's New Jersey Action. *See John T. v. The Delaware County Intermediate Unit*, 318 F.d 545, 554 (3d Cir. 2003) ("If civil contempt sanctions are not designed to punish, they may be retroactive.").

Moreover, Plaintiffs request that this Court prospectively hold Milanian in civil contempt if he fails to dismiss the New Jersey action within three business days of entry of this Court's Contempt Order. The Court should assess an enhanced penalty of $5,000 for each day Milanian is in violation. A defendant may be held in civil contempt to enforce an injunction. *Portland*

Feminist Women's Health Center v. Advocates For Life, Inc., 877 F.2d 787, 789-90 (9th Cir. 1989). In the context of a civil contempt charge, a defendant's disobedience with a court's order need not be willful, and contempt cannot be avoided based solely upon the defendant's good faith. *Harley-Davidson, Inc. v. Morris*, 19 F.3d 142, 148-49 (3d Cir. 1994). The prospective contempt charge sought here is civil in nature because "its purpose is remedial, *i.e.*, to compensate for the costs of the contemptuous conduct or to coerce future compliance with the court's order." *Portland Feminist*, 877 F.2d at 790.

If Milanian fails to comply with the Court's Order to dismiss his New Jersey Action, the imposition of compensatory sanctions against Milanian is appropriate. Plaintiffs will expend considerable expenses and attorneys' fees in defending Milanian's New Jersey Action. As a form of compensatory relief, Milanian should be required to compensate Plaintiffs for their costs and fees in defending the New Jersey Action, as well as all expenses incurred in handling any public relations, marketing or promotional issues that arise as a result of Milanian's lawsuit.

CONCLUSION

Based on the foregoing, this Court should deny Milanian's Motion for Reconsideration and Alteration of Judgment. In addition, this Court should hold Milanian in contempt of court and assess the sanctions requested above.

Respectfully submitted,

By: Gary R Goodheart

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

CAESARS WORLD, INC. and PARK PLACE ENTERTAINMENT CORPORATION,	:	Hon. Roger L. Hunt, U.S.D.J.
Plaintiffs,	:	CV-S-02-1287-RLH(RJJ)
v.	:	AFFIDAVIT OF STEPHEN W. FEINGOLD
CYRUS MILANIAN and THE NEW LAS VEGAS DEVELOPMENT COMPANY, LLC,	:	
Defendants.	:	

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

STEPHEN W. FEINGOLD, being duly sworn, upon his oath, deposes and says:

1. I am an attorney at law in good standing in both the States of New York and New Jersey. I am a member of the firm of Pitney, Hardin, Kipp & Szuch LLP, attorneys for the Plaintiffs Caesars World, Inc. ("CWI") and Park Place Entertainment Corp. ("PPE") in this matter. As such, I am familiar with the facts set forth below.

2. I make this Affidavit in support of Plaintiffs' Opposition to Defendant Cyrus Milanian's Motion for Reconsideration and Alteration of Judgment and Plaintiffs' Cross-Motion for Contempt.

3. On Friday, February 28, 2002, I learned that on February 27, 2003, CWI and PPE were served with summons and complaint with respect to the lawsuit Mr. Milanian filed against CWI and PPE in Superior Court of New Jersey, Atlantic County, on January 27, 2003.

4. On Tuesday, March 4, 2003, I contacted by telephone, Kenneth Goodkind, Esq., Mr. Milanian's New Jersey counsel who filed the Complaint in the New Jersey action. During that call, Mr. Goodkind advised me that he had just received a copy of this Court's February 19, 2003 Findings of Fact, Conclusions of Law and Judgment. I told Mr. Goodkind that while I understood that he would need to review this decision, absent immediate resolution of Mr. Milanian's New Jersey action, CWI and PPE would seek contempt charges. Mr. Goodkind has not contacted me since that phone call. Instead, on March 6, 2003 Milanian filed the instant motion for reconsideration in this Court.

5. On March 19, 2003, CWI and PPE filed a Notice of Removal with the District Court of New Jersey related to Mr. Milanian's New Jersey State action.

6. I attach hereto as Exhibit A a true copy of the letter dated March 18, 2003 from my partner and co-counsel in this case, Richard Brown, to Melvin Silverman and Andras Babero, Mr. Milanian's counsel in this case, with a copy to Mr. Goodkind. As of close of business on March 21, 2003, no one on Mr. Milanian's behalf had responded to that letter.

STEPHEN W. FEINGOLD

Sworn and subscribed to
before me this 24 day of March 2003

Notary Public

ANNA LISYANSKY
Notary Public, State of New York
No. 01LI6026665
Qualified in Bronx County
Commission Expires December 13, 2005

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18, 2003

Via UPS Delivery

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Andras F. Babero, Esq.
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Las Vegas, NV 89134

Re: *Milanian v. Caesars World and Park Place Entertainment*
NJ Superior Court Docket No. ATL-L-230-03

Dear Mel and Andras:

I send this letter along with a copy of the Notice of Removal (and related papers) being filed in the above matter.

We obviously disagree with the reading of *Seattle Totems Hockey Club, Inc. v. National Hockey League*, 652 F.2d 852 (9th Cir. 1981) and the Anti-Injunction Act, 28 U.S.C. §2283 set forth in your client's motion for reconsideration in the District of Nevada case. There is a judgment in that matter, and thus Judge Hunt's injunction applies, irrespective of whether your client's subsequent suit is filed in federal or state court. (See ¶120 of Judge Hunt's Findings of Fact, Conclusions of Law and Judgment). However, with the removal of your client's New Jersey state court action to federal court, there is clearly no colorable basis to claim that the relief ordered by Judge Hunt is somehow unclear. Accordingly, we request that Mr. Milanian immediately dismiss with prejudice the New Jersey action. Our clients reserve all rights, including the right to seek contempt sanctions, if he fails to do so.

Very truly yours,

COPY

RICHARD H. BROWN

RHB/s
cc: Kenneth S. Goodkind, Esq.

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EXHIBIT A